88- 1738

Supreme Court, U.S.
FILED
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JOSEPH F. SPANIOL, JR.
CLERK

In The

SUPREME COURT of the UNITED STATES

October Term, 1986

No.

HENRY MALACHOWSKI

Petitioner

-against-

SILVERBERG, MARVIN & SWAIM, P.C.
& JAMES A. RANDEL, Esq., employee

BERKOWITZ & BALBIRER, P.C.

JUDGE ROBERT L. LEVISTER, P.J.
JUDGE T. CLARK HULL
JUDGE HUGH C. CURRAN
JUDGE SIDNEY S. LANDAU
JUDGE NICHOLAS A. CIOFFI
JUDGE MARGARET C. DRISCOLL
JUDGE STANLEY NOVACK

SILVER, GOLUB & SANDAK, P.C.
& ERNEST F. TEITELL, Esq., employee

U.S. MAGISTRATE THOMAS P. SMITH
U.S. DISTRICT JUDGE ELLEN BREE BURNS
U.S. DISTRICT JUDGE T. EMMET CLARIE

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

HENRY MALACHOWSKI - PRO SE
28 Wright Street
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136 pp

QUESTIONS PRESENTED

The issues framed by the petitioner are Constitutional questions and legal rights:

1. Can the lower federal court and the Appeals Court for the Second Circuit preclude petitioner from enforcing and prosecuting his Constitutional claims and legal rights secured by federal court that granted petitioner a final federal judgment, and where the federal court and the Second Circuit Court of Appeals refused to do its unquestioned duty under Acts of Congress and the Constitution imposed upon it to protect and effectuate petitioner's final federal judgment, terminated with prejudice by the parties from being impaired, defeated and relitigated in subsequent state court proceedings to defraud the petitioner of property granted by federal court and of petitioner's money, and attach by prejudgment remedy, without prior

notice and without the opportunity to be heard before petitioner's home was seized?

2. Can petitioner's final judgment rendered by federal court on February 15, 1977, terminated by the parties with prejudice, be impaired, modified, relitigated by a subsequent state court proceeding brought by petitioner's former attorney, who illegally intervened in privy to the same matters already concluded by federal court? Shouldn't this attorney be held in contempt of federal court's jurisdiction over its final judgments?

3. Is petitioner's former attorney, Silverberg, Marvin & Swain, P.C. and by James A. Randel, Esq., be permitted to illegally intervene without petitioner's consent by executing and unauthorized final federal judgment (Stipulation and Order and Settlement Agreement), having inserted therein provisions, without peti-

tioner's consent or knowledge, said attorney's legal fee, expressly provided for himself as "cost of effectuating this settlement agreement", a fixed amount, without petitioner's signature, without petitioner's presence in federal court to hear it read into the record as law, (was executed in the judge's chambers) to defraud the petitioner of an unsubstantiated legal fee, then immediately demand that amount as their legal fee because the federal judgment says so, even though said law firm admitted they were already paid in full in advance? Isn't this fraud? Isn't this fraud in using the federal court to defraud the petitioner of money?

4. Is said attorney permitted to steal the fruits of the property of said final federal judgment decreed to the petitioner by federal court, i.e., secret FDA chemical and clinical testing information of

original documents on file with the FDA, U.S. Patent secret information (documents) not public knowledge, from within the U.S. Patent Office, under security of the U.S. Patent Office, and U.S. Government property from a federal judge, not public knowledge, for which penalty is set by federal statutes? 18 U.S.C. § 371; § 641.

5. Can said attorney defy federal court jurisdiction over petitioner's final federal judgment terminated with prejudice,, and be permitted to attach petitioner's real property and sue petitioner in a state court for the same matters of legal fees already concluded by federal court which entered the final judgment,, to which said attorney illegally intervened by consenting to and executing those official documents in their name which expressly provides for said attorney's legal fees as "cost of effectuating this settlement

agreement? Isn't this attorney in contempt of federal courts' final judgment?

6. Can state court judges refuse to give "full faith and credit" to petitioner's final federal judgment by ignoring federal laws prohibiting relitigation and impairment of petitioner's final federal judgment that was terminated with prejudice and defy petitioner's pleas of RES JUDICATA and Principles of Collateral Estoppel and deliberately contravene state laws mandating dismissal for lack of jurisdiction of the subject matters already concluded by federal court? Are these state court judge acting in complete and clear absence of all jurisdiction of the subject matter already determined by federal court that precludes relitigattion by said attorney who illegally intervened upon petitioner's final federal judgment as a party in privy to the same

issues already settled by federal court to which said attorney affixed his signature binds that attorney to the judgment?

7. Where there are prior, private agreements between the attorney and state court judges to favor the attorney, aren't such orders issued unenforceable, null and void, as being violative of due process of the law?

8. Where respondents can make prior, private agreements to favor respondents, with the U.S. Magistrates, U.S. District Judges, can all named U.S. District Judges and U.S. Magistrates refuse to do their duty which is imposed upon the National Courts, which they may not renounce, to exercise federal courts jurisdiction to protect and effectuate petitioner's final federal judgment, which is authorized by Act of Congress 28 U.S.C § 2283, to enjoin by injunction, a state court proceeding

that is impairing, relitigating and modifying issues already determined and concluded by federal court, and fail to effectuate petitioner's final federal judgment where petitioner's former attorney stole the fruits of the property decreed to the petitioner by federal court? Does this not violate due process of the law?

9. Can the lower federal court judges and magistrates ignore, contravene and fail to do their duty to uphold decisions of the same matters rendered by U.S. Courts of Appeals, U.S. Supreme Court, the Constitution and laws of the United States; turn over to a state court federal courts' jurisdiction over its final judgment to be nullified, relitigated and defeated, thereby depriving the petitioner of his Constitutional protected rights and legal rights secured to the petitioner by a prior federal court to vindicate those rights secured,

impartially, without bias, prejudice and without collusion in the appropriate federal court? Is this not violative of Due Process of the law and Equal Rights to the laws?

10. Where there is clear abuse of discretion and usurpation of judicial power, is the petitioner entitled to a Writ of Mandamus directed to the respondent to do his duty under the Constitution and laws of the United States imposed upon the Judge/ Magistrate? Does the federal court permit lawlessness in its courts?

11. Can a U.S. Magistrate, in violation of the Magistrates Act,, in conflict with the U.S.Court of Appeals and U.S. Supreme Court decisions of the same essential matters, and in contravention of federal laws and the Constitution, without Congressional authority,, without power to decide, rule upon, call for hearings, made ulti-

mate decisions in contravention of the Constitution of the United States and its laws,. cite totally irrelevant authorities that are without merit, and contrary to petitioner's constitutional claims effecting petitioner's final federal judgement claims, which said Magistrate ignored by ruling after prior, private agreement with respondents attorney, a former assistant U.S. Attorney, to favor said attorney, by permitting all defendants to ignore petitioner's federal judgment claims, granting defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted? Does the Federal Court Judge have the power to delegate such duties to a magistrate where federal laws and the Magistrates Act prohibits such duties to be turned over to a magistrate? Can the Magistrate and Federal Judge turn over federal courts' jurisdiction of already

determined and settled issues of its final judgment to a state court to be impaired and relitigated?

12. Does the federal court judges have authority to permit the respondents to transgress laws of the United States by allowing the U.S. Magistrate and Federal Judges to obstruct justice to deprive the petitioner from vindicating his Constitutional claims and legal rights rendered by U.S. District Court of a final federal judgment, by allowing the defendants not to answer to petitioner's complaint averring deprivation of Constitutional protected rights and federal and legal rights in violation of § 1983; § 1331;§1343(3)? Was the petitioner's Due Process rights violated? Was the petitioner's right to a fair and impartial proceedings/trial secured by the Seventh Amendment violated? Was the petitioner deprived of his right

to Judgment by Default for failure of the respondents to answer petitioner's complaint claims and federal judgment claims?

13. Are the private law firms, named herein, permitted to defy federal laws in attempt to defeat federal courts' jurisdiction over already settled issues in which federal court has precedence over petitioner's final federal judgment, of "cost of effectuating this settlement agreement", aid and abet,"under color of law,"in such concerted overt acts with the named state court judges to defraud the petitioner in a state court proceeding which is in contempt of federal courts' jurisdiction first and properly acquired; permit said attorney who acted in privy, consented and signed in his name his legal fee provisions into petitioner's final federal judgment binds that attorney by federal law to the judgment, and to the

sovereignty which rendered said final federal judgment?

14. Can the U. S. District Judge rule upon matters pending upon appeal with the U.S. Court of Appeals for the Second Circuit without having jurisdiction of the matter. Isn't this acting in clear and complete absence of all jurisdiction of the subject matter? Should this U. S. District Court Judge continue to clearly abuse his discretion and usurpation of judicial power, especially when the Judge made a prior, private agreement with the respondent to favor the respondent? Does this not violate due process of the law and hold such orders as unenforceable, null and void? Shouldn't this Judge be held liable for obstructing justice? Shouldn't the Judge recuse himself upon petitioner's motion, especially when this judge had respondent in his chambers with-

out opposing counsel present? Does this not violate due process of the law?

15. Can U.S. District Judge Peter C. Dorsey misrepresent U.S. Supreme Court decisions, Webster's dictionary upon the same matters of "cost of effectuating this settlement agreement" as not being legal fees for effectuating the settlement agreement, that they are royalties, shows lack of competence of this judge, when in fact, on state court record these are the issues, legal fees, "cost" that are being relitigated by the named defendants in state court in contempt of federal courts' jurisdiction over its final judgment?

16. Can respondents make prior, private agreements to favor themselves with the U.S. Magistrate, federal judges, Appeals Court Judges, to preclude petitioner from enforcing his constitutional claims, by not affording the petitioner the oppor-

tunity to a hearing to prove his constitutional claims, evidentiary hearing to submit evidence showing respondents deprived petitioner of Constitutional protected rights in violation of § 1983;§1331;§1343 (3) and the 1st, 4th, 5th, 6th, 7th, and 14th Amendments of the Constitution of the United States, and federal legal rights secured by petitioner's final federal judgment, and deprived the petitioner of discovery wherein respondent, Golub violated 28 USC § 1654, to obstruct justice? Isn't this violative of due process of the law?

17. Where in state court. the judge says, this is a matter of federal court jurisdiction, another judge walked out of the hearing when she was informed that federal court has jurisidcition over legal fees, another judge ordered Silverberg to bring in his authority to bring suit to state

court of federal courts' jurisdiction over Silverberg's legal fee already determined in petitioner's final federal judgement, and what kind of a person is this Silverberg to attach Malachowski's home without evidence of reasonable value as Silverberg claims, this judge ordered Silverberg to return all property he took from Malachowski and return all money unconstitutionally seized.' SILVERBERG ignored the Judge's order and had the judge removed. SILVERBERG ADMITTED HE HAS petitioner's original FDA documents, clinical and secret chemical information and U. S. Patents, which he is not supposed to have, he will not turn them over to petitioner unless petitioner dismisses the action against them. Where another judge ordered that Silverberg et al a corporation cannot practice and appear PRO SE and cannot close pleadings, it is prohibited! Which means:

Silverberg has no case, no evidence of resonable value, no evidence to support prejudgment attachement of petitioner's home without prior notice and prior opportuntity to be heard to contest the attachment /garnishment of petitioner's home /money in violation of Due Process of the law, as clearly established by the state court judge, who Silverberg had removed, and the fact that Silverberg et al's pleadings are prohibited as being moot, being that all such pleading were signed as Pro Se, which obstructed justice in the state court depriving the petitioner of constitutional protected rights in violation of § 1983; § 1331; § 1343(3) and certain provisions secured to the petitioner by the Constitution and laws of the United States.

Silverberg, et al still has petitioner's decreed property and money unconstitutionally seized in violation of due process of

the law and in contempt of federal courts' jurisdiction over settled issues.

Where respondents have their own state court judge to do their bidding (Golub's wife) and their own U. S. Attorney, employed by Silver, Golub & Sandak, P.C. above named defendant.

Petitioner has shown that respondents were wilful participants in "state action" in joint activity with the state or its agents in depriving the petitioner of constitutional protected rights in violation of § 1983; § 1331; § 1343(3).

Where petitioner submitted state court's order;"petitioner's final federal judgment can be relitigated in state court, the judgment (terminated with prejudice) does not say it cannot be relitigated,. and did therefore add Silverberg's name to the final federal judgment,."of which Silverberg is not a party to the federal judgment.

18. Where petitioner has shown in para. 17, that petitioner is forced to defend contempt of petitioner's final federal judgment in state court proceedings. Petitioner has been irreparably injured to his detriment by the respondents unconstitutional conduct, and by the federal court and Appeals Courts' failure to do their duty under the Constitution and laws of the United States imposed upon them. Petitioner has been repeatedly deprived of constitutional protected rights and federal legal rights by the state and federal courts, Where the federal judges in dereliction of their duty obstructed justice to preclude the petitioner from vindicating his rights in federal court. Isn't this clearly violative of Due Process of the law and Equal Rights to the laws under the Constitution of the United States?

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List of Parties to the Proceeding

Henry Malachowski
Petitioner-Plaintiff

-against-

Silverberg, Marvin & Swaim, P.C.
& James A. Randel, Esq., employee

Berkowitz & Balbirer, P.C.

Judge Robert L. Levister, P.J.
Judge T. Clark Hull
Judge Hugh C. Curran
Judge Sidney S. Landau
Judge Nicholas A. Cioffi
Judge Margaret C. Driscoll
Judge Stanley Novack

Silver, Golub & Sandak, P.C.
& Ernest F. Teitell, Esq., employee

U.S. Magistrate Thomas P. Smith
U.S. District Judge Ellen Bree Burns
U.S. District Judge T. Emmet Clarie
Respondents-Defendants

Counsel for Respondents

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Hoffman v Halden 268 F2d 280 (9th Cir. 1958)

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U.S. MAGISTRATE THOMAS P. SMITH
U.S. DISTRICT JUDGE ELLEN BREE BURNS
U.S. DISTRICT JUDGE T. EMMET CLARIE

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Petitioner prays that a writ of certiorari issue to review the order entered of the United States Court of Appeals for the Second Circuit: be and it is hereby is

denied - and the appeal is dismissed.

DECISION BELOW

The Court of Appeals for the Second Circuit, namely Irving R. Kaufman, Judge, entered its order that the appeal is dismissed on July 08, 1986, a copy of such order is printed as page 45a of the Appendix herein.

Petitioner submitted a Petition to Rehear Court's order of dismissal of petitioner's appeal-- is Denied.

By
Irving R. Kaufman

James L. Oates

Circuit Judges

JURISDICTION

This petition for certiorari to review the order of the United States Court of Appeals for the Second Circuit filed July 08, 1986, is timely made with 90 days of the filing in that Court on August 12,

1986 of its Order on Appellant's Petition to Rehear, treated for reconsideration - is denied.

Petitioner's Motion to Vacate Court's Dismissal was returned to petitioner -- This Court issued an order dated August 11, 1986, denying your motion for reconsideration. That order constituted the final review of your appeal in this court.

By: _____
Marcia C. Mahan
Deputy Clerk

Dated September 19, 1986

The jurisdiction of this Court to review such judgment is invoked pursuant to 28 U.S.C. Section 1254 (1), Rule 17 (a)(c) of this Court and federal questions; this case comes within the provisions because the decisions of the Court of Appeals for the Second Circuit in denying petitioner's appeal by DISMISSAL is affirming the low-

er court's judgment dismissing the action, is in conflict and repugnant to the U.S. Supreme Court decisions, other federal and Appeals Court decisions, to the Constitution, to the laws of the United States and to petitioner's Constitutional guarantees secured by his final federal judgment which the lower courts refuse to protect and effectuate, refuse to take jurisdiction, and refuse to do its duty to enjoin relitigation of settled issues in state court proceedings. And where the lower courts refused to do its unquestion- duty imposed upon it by the Constitution and laws of the United States.

CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

1st Amendment to the Constitution of the United States, provides:

> "Congress shall make no law...or abridging the freedom of speech.."

4th Amendment to the Constitution of the United States, provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue but upon probable cause.."

5th Amendment to the Constitution of the United States, provides:

> "No person shall be held to answer ...nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law..."

6th Amendment to the Constitution of the United States, provides:

> "In all criminal prosecutions..to be informed of the nature and cause of the accusation; to be confronted with witness against him; to have compulsory process for obtaining witnesses in his favor; to have assistance of counsel for his defense."

7th Amendment to the Constitution of the United States, provides:

> "Right to trial by jury"

8th Amendment to the Constitution of the United States, provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

Section 1 of the 14th Amendment to the Constitution of the United States, provides:

> "...nor shall any State deprive any person of life, liberty, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. Section 1331 Federal Question

> The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

28 U.S.C. Section 1343(3)

Civil Rights and elective franchise

> (a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
>
> (3) To redress the deprivation, under color of any State law, statute,. ordinance, regulation,. custom or usage,

of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

42 U.S.C. Section 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

28 U.S.C. Section 2283 Stay of State court proceedings

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, ot to protect or effectuate it judgments."

STATEMENT OF THE CASE

(a) The Facts

The U.S. District Court Judges, U. S. Magistrates, refused to do their duty under the Constitution and laws of the United States imposed upon them, refuse to enjoin petitioner's final federal judgment from being impaired and relitigated in state court proceedings, brought by Silverberg in PRIVY to the same essential issues already determined and settled by federal court, as RES JUDICATA

Where Silverberg stole petitioner's property decreed to petitioner by federal court, the federal court and Appeals Court refused to do their duty under Act of Congress 28 USC § 2283 to protect and effectuate petitioner's final federal judgment.

(b) Proceedings Below

The petitioner shows from the voluminous record in the Appendix attached herein,

that the federal court, U.S. Magistrates, U.S. District Judges and Appeals Court Judges have continuously deprived petitioner of his legal right under Act of Congress to prosecute his Constitutional claims and federal legal rights in federal court.(See App. Mag. Ruling p.1a-12a)

Federal court and Appeals Court judges have ignored the facts on record that respondent, Silverberg, et al stole property decreed to the petitioner by federal court, that rendered petitioner a final federal judgment, and have refused to do their unquestioned duty under 28 U.S.C. § 2283 to exercise federal courts' jurisdiction to protect and effectuate petitioner's final federal judgment from being relitigated and impaired in state court proceedings.

The record clearly shows, federal court judges clearly abused its discretion and

usurpation of judicial powers, refused to do its duty, to hold hearings upon petitioner's Constitutional claims and federal legal right claims, deprived petitioner of evidentiary hearing where petitioner may offer proof of deprivation of Constitutional protected rights in violation of 28 U.S.C. § 1983; § 1331; § 1343(3) and rights secured to the petitioner by the Constitution of the United States.

Petitioner has shown that he was deprived of discovery by a corporation acting as attorney pro se in violation of clearly established law 28 U.S.C. § 1654.

Petitioner has shown federal court Judge Peter C. Dorsey, refused to declare Connecticut's Prejudgment Attachment/Garnishment Statutes unconstitutional as being violative of Due Process of the law where Silverberg et al, seized petitioner's home/money without prior notice and

opportunity to be heard to contest deprivation of petitioner's constitutional protected rights, property and immunities.

Petitioner was deprived the right to appeal from a final judgment entered by the lower federal court. (see App p. 45a)

Petitioner was intimidated by the Court of appeals Judge to preclude petitioner from vindicating his rights secured to him by the Constitution of the United States and his federal legal rights secured to him by a final federal judgment, is clearly an obstruction of justice.

REASONS FOR GRANTING THE WRIT

Petitioner has shown that Judge Peter C. Dorsey, U. S. Magistrates, and prior federal judges and the judges for the Second Circuit Court of Appeals clearly abused their discretion and usurpation of judicial powers in their deliberate failure to do their duty under laws imposed

upon the National Courts, which they may not renounce,, refused to exercise federal court's jurisdiction to protect and effectuate petitioner's final federal judgment from being relitigated and impaired in state court proceedings. Where jurisdiction was pending upon appeal with the Second Circuit Court of Appeals, re State Court Judges, Peter C. Dorsey, USDJ granted state court judges summary judgment, turning over federal court's jurisdiction of its final judgment to be relitigated and impaired, permitting contempt of petitioner's final federal judgment. See Manning v Ketchum 58 F2d 948 (6th Cir. 1932) where there is clear and complete absence of all jurisdiction of the subject matter,. the judges are liable, and in Rankin v Howard 633 F2d 844 (9th Cir. 1980) where the court is without subject matter jurisdiction, all orders are un-

enforceable, null and void.

Federal laws govern and take precedence, where necessary in aid of its final federal judgments, under 28 U.S.C § 2283 & § 1651 authorized by Act of Congress, to exercise federal court's jurisdiction, to protect or effectuate, by enjoining a state court proceeding attempting to relitigate and defeat federal court's jurisdiction over its final judgment. See Brun et al v Mann 151 F 145 (8th Cir. 1906):"It is the duty of the National Courts, which they may not renounce, is to protect it's judgments plenary."

In Woren v Weatherbee, Sherman, 240 Fed 1013,. "Federal Court cannot turn over its jurisdiction to a state court."

Toucey v New York Life Insurance Co., 314 US 118 cited under 28 U.S.C. § 2283, Page 693 of the Federal Rules of Civil Procedure. "The power of the courts of the

United States to protect their judgments was unquestioned.." sets forth federal court's jurisdiction first acquired,, has made a final judgment, precludes relitigation in a state court by a party or those in privity. as in Toucey, supra

In Swift v Black Panther Oil & Gas Co., 144 Fed 20 (8th Cir. 1917),"the federal intervener brought suit to a state court in contempt of federal court's judgment and was enjoined rather than imposing sanction of contempt." see Toucey, supra

See Deposit Bank v Board of Councilmen of Frankfort, 186 US 199 (1903):

> "As between National and State Court, neither will undertake to grant relief from a judgment by the other. One having equitable grounds for relief from a judgment in courts of either must apply to the court of the sovereignty in which the judgment was rendered."

Federal Court and Appeals Court Judges deprived the petitioner of his plenary

rights to injunctive relief by their failure to do their duty to protect petitioner's final federal judgment from being impaired and relitigated in state court proceedings brought by Silverberg, et al, in privy to the same matters already determined by federal court, as in Toucey, supra

Peter C. Dorsey, USDJ, misrepresented the settled issues in petitioner's final federal judgment (EXH. page 17b; para (F) and its mandate of "cost of effectuating this settlement agreement, para. 13 (F), as not being cost of the action, costs and fees, counsel fees as cost of the litigation, is in conflict with the U.S. Supreme Court decisions expressly determined and clearly defined upon the same matters. See Kansas City Southern Railway Co. v Guardian Trust Co., 281 US 1 (1930) and cases cited:

Costs, Sec 32 -- award of -- what included.

1. When used in a judgment or decree without qualification, the word "cost" means the amount taxable as such under Acts of Congress...

Costs, Sec. 33 -- Allowance of Counsel fees.

5. The purpose to allow costs between solicitor and client,, and to include therein attorneys' fees...

Federal laws govern and provide appropriate means for Modification of final judgments/decrees. Costs and fees, allowance of counsel fees and expenses of litigation. See Sprague v Ticonic National Bank 307 US 161 (1938); Johnson Co. v Wharton, 152 US 252 (1894); Pacific Railroad Co. of Missouri v Ketchum, 101 US 289 (1880); Mason v Pewabic Mining Co., 153 US 361 (1894); Annotations 8 Led 2nd 88, Right to counsel fees in federal court, Vaughan v Atkinson.

The records shows, by such illegal

intervention by Silverberg, et al, in privy upon petitioner's final federal judgment, by inserting his legal fee into the provisions as "cost of effectuating this settlement agreement" and executing same in his name, without power of attorney; 5 U.S.C. § 500, binds said attorney as privy to the same matters to petitioner's final federal judgment and is a bar under the Doctrine of Res Judicata; See Pacific Railroad Co. of Missouri v Ketchum, supra.

The federal record evinces: the court ignored petitioner's federal judgment claims for relief in the petitioner's multiple claims, multiple party action, brought under the Civil Rights Act, permitted all defendants to ignore same and not answer to petitioner's complaint claims in which the magistrate, without authority violated the Magistrates Act, made ultimate meritless decisions, decided

and granted defendants' frivolous Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted, thereby depriving the petitioner of his federal legal rights secured and deprived petitioner of Judgment by Default, without authority and in violation of the Magistrates Act and Federal law 28 U.S.C § 636 (b)(1)(A) denied petitioner's Motion for Injunctive Relief. See TPO, Incorporated v Hon. Thomas R. Mc Millen, 460 F2d 348 (7th Cir. 1971) and See La Buy v Howes Leather Co. 352 US 249 (1957) rebuts this magistrate's unauthorized intervention to decide motions to dismiss, make ultimate decisions upon Constitutional protected rights and federal legal rights, where the district courts have no power to delegate such duties to magistrates or permit this magistrate to rule upon petitioner's Motion for Injunctive Relief. App. p. 4a.

The federal record evinces the lower court deprived the petitioner of his Constitutional guarantee to vindicate his federal rights to prosecute his federal judgment claims with impartiality,. without bias, prejudice, without collusion in federal court. That reversible errors were made substantially effecting petitioner's constitutional protected rights and federal legal rights, if uncorrected would result in miscarriage of justice and which justifies reversing a judgment in the court below.

The lower court and Appeals Court ignored petitioner's Civil Rights action avering Constitution claims and was not afforded the opportunity to prove it, was deprived of evidentiary hearings and discovery. See Escalera v N.Y. City Housing Authority 425 F2d 853 (2nd Cir. 1970) at 857 (1, 2);

> "An action especially under the Civil Rights Act should not be dismissed at the pleading stage."

and in Wasson v Trowbridge 382 F2d 807 (2nd Cir. 1967):

> "Appellant's Constitutional claims cannot be dismissed without an evidentiary hearing."

as in Escalera. supra: "no court can make such instant decision."

Where the order of dismissal id App p

> "where result of ruling was effectually to preclude plaintiff from court." 28 U.S.C. § 1343; 42 U.S.C. § 1983; cited in Spires v Bottorff 317 F2d 273 (7th Cir. 1963)

and in Conley v Gibson, 355 US 41 (1957) rebuts dismissal; when in fact the petitioners issues of facts and federal court's final judgment are clearly set out in detail,. the facts upon which petitioner bases his claims gave fair notice of what petitioner's claims are and the grounds upon which they rest; petitioner's complaint relating to federal legal claims

derived from petitioner's final federal judgment,. terminated with prejudice by the parties, defendants' interferences of said judgment, stated claims based upon defendant's unjust enrichment to justify relief and precludes dismissal, F.R.C.P. 8(a)(2); 12(b)(6) and issues of facts existed on federal records precluding summary judgment.

Federal court's jurisdiction is based upon the Constitution, laws of the United States and petitioner's final federal judgment violations, See Bush v Lucas 462 US 367 Jurisdiction for suit filed under the Constitution.. citing Bell v Hood 317 US 684.

Peter C. Dorsey, USDJ, refused to recuse himself for his questionable impartiality, refused to do his duty under the Constitution and laws imposed upon him, Petitioner filed an action against Peter C.

Dorsey, USDJ, and "Golub" above named defendant, officer of the corporation of Silver, Golub & Sandak, P.C. H-85-732-C, where Judge Dorsey permitted "Golub" to act pro se when in fact the corporation has an attorney of record, which is prohibited under 28 U.S.C. § 1654; and prohibited by the following federal courts: In Brasier v Jeary 156 F2d 474 (8th Cir. 1958): Established under 28 U.S.C § 1654

> "A party to a civil suit may not appear pro se and insist on right to be represented by counsel at the same time."

In Osbrn v President, etc., of United States Bank 1824, 9 Wheat, 738, 22 US

> "Natural persons may appear in courts, whether by themselves, or by their attorney *** A corporation, it is true, can only appear by counsel."

> "We conclude that the appellant has no constitutional or other right to conduct his own case pro se and have the aid of counsel speak and argue for him at the same time."

In James v Daley v Lewis 406 F.Supp 645 Corporations:

> "President of corporations was not entitled, by appearing pro se, to represent corporation in court."

and See ..Shapiro, Berstein & Co., Inc. v Continental Record Co., Inc. 386 F2d 427 (2nd Cir. 1967); Collins v O'Brien 208 F2d 44; Brandstein et al v White Lamp, Inc. 20 F.Supp 369; Mullins Johnson Co.v Mut. Life Ins. Co. 9 F.Supp 175, citing: Sellants-Repent Corp. v Queens Gas & Electric Co., et al 290 N.Y.S. 887;

In Turner v American Bar Ass'n. 407 F.Supp 451 at 452:

> ".... corporations and partnerships must be represented by licensed counsel.... 28 U.S.C. §1654."

The record shows Silver, Golub & Sandak, P.C. have been practicing under a false name for over six (6) years in state and federal courts, which Peter C. Dorsey, USDJ, is well aware of.

Where Peter C. Dorsey dismissed the action, petitioner appealed, Appeals Court for the Second Circuit affirmed the lower court's dismissal, App. page 45a, without permitting petitioner a hearing. Petitioner argues he was deprived of evidentiary hearings, he was denied the opportunity to be heard to present his constitutional claims and federal legal rights and the opportunity to prove it, Petitionerr says: Peter C. Dorsey, USDJ order of dismissal was unconstitutionally vague, because in petitioner's multiple parties, multiple claims Civil Rights Action, petitioner was deprived of the right to have all issues necessary to prosecute his Constitution-claims and all claims against these defendants and should not go to trial on those issues which were precluded, foreclosed and were acted upon without authority by U.S. Magistrate Latimer; See 28

U.S.C. 636; TPO, Inc. v McMillen, supra; La Buy v Howes Leather, supra; dismissing those issues raised and constitutional protected rights secured to the petitioner, and petitioner's final federal judgment rights, instead, compelling the petitioner to go to trial with those issues unanswered, that were ruled upon contrary to established laws, is therefore reversible errors. See Gillespie v United States Steel Corp. 379 US 248(1964) at 203; Rule 54 (1962 amendment) of the Federal Rules of Civil Procedure, 1985 Edition; Cohen v Beneficial Industrial Loan Corp. 337 US 541. See Bell v Burson 402 US 535(1971)

Peter C. Dorsey, USDJ, ignored the facts on record thatpetitioner's Motion for Order, in re Contempt of Court and for Injunctive Relief was ruled upon by U.S. Magistrate Latimer without authority and clearly violative of established law; 28

U.S.C. § 636 and the Magistrates Act. Petitioner appealed to the Second Circuit, #83-6016 as in the case of: TPO, Inc. v McMillen, supra; La Buy v Howes Leather, supra; Jackson v Carter Oil Co, et al 192 F2d 524 (10th Cir. 1950) as for contempt proceedings: (see App. p 4a)

> "The Court of Appeals, Pickett, Circuit Judge, held that a state court proceeding was an attempt to relitigate matters already determined in federal court, and that such court had authority under 28 U.S.C.A. § 2283 to enjoin prosecution of the proceedings. "

and as cited in Toucey, Supra

The Appeals Court for the Second Circuit did not act upon said appeal, they lost petitioner's briefs. See App. p. 22a; Appeals Court found petitioner's briefs, petitioner resent copies, See App. p.24a

Appeals Court says: #83-6116 and #83-6044 have been taken from orders of a Magistrate (See App. p. 38a)... they are dismissed for lack of jurisdiction.

Petitioner argues: isn't the dismissal of #83-6016 and #83-6044 for lack of jurisdiction because a magistrate ruled and is not a final appealble order by the district court, see App. p. 39a; when the same Appeals Court granted and affirmed the magistrate's ruling in re petitioner's appeal of See App. p. 1a, appeal No. 82-6350 which was also ruled by a magistrate. Isn't there conflict in these three (3) appeals #82-6350, 83-6016, 83-6044, which were all ruled upon by U.S. Magistrate Latimer, see App. p. 1a; p. 4a; p. 6a; p.8a; p.1a; 12a; all of which were ruled upon by the magistrate.

Petitioner RE-FILED all appeals from papers submitted from Hartford Federal Court Clerk's Office,. affirmed by T.F. Gilroy Daly, USDJ. Fee was paid at the initial filing with this court. Petitionnever received response from the Second

Circuit.

Peter C. Dorsey, USDJ, ignored the facts on record, that petitioner's appeal #83-6044 as against Silver, Golub & Sandak, P.C., Ernest F. Teitell, and Berkowitz & Balbirer, P.C. 's Motion to Dismiss for failure to state a claim upon which relief can be granted was ruled and granted by U.S. Magistrate Latimer without authority and clearly contrary to established law, 28 U.S.C. § 636 and the Magistrates Act,, is a reversible error. Petitioner's appeal #83-6016 and 83-6044 was never decided by the Second Circuit even after petitioner RE-FILED his appeals from papers submitted from Federal Court, affirmed the Magistrate's ruling by T. F. Gilroy Daly, USDJ. There has been no response in re #83-6044 as to these defendants from the Appeals Court for the Second Circuit.

Petitioner contends, there is an

obstruction of justice,, there is no clarity to appeal Nos. 82-6350; 83-6016; 83-6044 leaving petitioner without direction for either discovery and/or evidentiary hearings or the opportunity to be heard to offer proof of his constitutional claims and federal legal right in re petitioner's final federal judgement, due to the fault of U.S. Magistrate Latimer ruling contrary to law, and without authority in violation of 28 U.S.C.§ 636 and the Magistrates Act and the Appeals Court not acting upon petitioner's valid appeals where there are reversible errors committed at the initial pleading stage.

Peter C. Dorsey, USDJ, deprived petitioner of a hearing/ or a three judge court, to declare Connecticut's Prejudgment Attachment/Garnishment Statute unconstitutional as violative of Due Process of law under the Constitution of the

United States, Petitioner cited: Lynch v Household Finance Corp. 405 US 538 (1972) at 436 and 437:

> "One assumption underlying Sect. 2283 is that the state courts will vindicate constitutional claims as fairly and efficiently as federal court. But this assumption cannot obtain when the doors of the state courts are effectively closed to a person seeking to enjoin a garnishment on constitutional grounds.
>
> "Because the extrajudicial nature of Connecticut garnishment, an injunction against its maintenance is not, therefore, barred by the term of Sect. 2283."

See Clements v Four North State Street Corp. 360 F.Supp 933 (1973) for unconstitutional seizure of property without prior notice and prior opportunity to be heard is violative of Due Process of law under the Fourteenth Amendment of the Constitution of the United States, the order is unenforceable, hence, null and void. as in Lugar v Edmondson Oil Company, Inc. 457 US 922 (1982)

All defendants were wilful participants

in "state action" in joint activity with the state or its agents in depriving the petitioner of constititonal protected rights, rights to property, money, and rights granted of property by federal court that entered a final judgment for the petitioner, which the named defendants "under color of law" refuse to give "full faith" and credit to petitioner's final federal judgment. See U. S. V Price 383 US 783; Auster Oil & Gas Inc. v Stream 764 F2d 381 (5th Cir. 1985) Federal as well as state official can be held liable under § 1983, see American Civil Liberties Union v City of Chicago 431 F.Supp 25 (1976) Citing Kletschka v Driver 411 F2d 436 (2nd Cir. 1969) at 26; and for failure to do one's duty in depriving petitioner of constitutional protected rights See: Littleton v Berbling 468 F2d 389 (7th Cir. 1972); Doe v County of Lake, Indiana 399

F.Supp 553 (1975) as cited in Shore v Howard 414 F.Supp 134 (1976) citing ex parte Virginia 100 US 339, where there is dereliction of duty. U.S.C.A. Amend. 14

Petitioner has avered false arrest by the state court judge as violative of the 1st Amendment, where the judge ignored petitioner's due process rights and equal rights to the law as other attorneys in the same courtroom were exercising.

Petitioner herein cites:

U.S. v Johnson Co. U.S. v Henry Co. 6 Wall 166-209 (1868) at 771:

> "It is not the lawful power of the state courts of Iowa to issue or execute any writs which will interfere with the jurisdiction of the Federal Court. If they do issue such a writ, it is a nullity.. .... If the Federal Court had the authority to render the judgment for the plaintiff, it must have absolute, uncontrolled, and uncontrollable authority to issue all writs necessary to enforce its collection."

The petitioner has the absolute right under Act of Congress 28 U.S.C § 2283 and the

All Writ Act 28 U.S.C.§1651 to enjoin state court proceeding relitigating petitioner's final federal judgment, and upon the above stated authorities.

Defendant has offered no evidence to support suit in state court in violation of federal court's jurisdiction. See Garner v Louisiana 368 US 157, and see Braithwaite v Lee 125 Conn 10, where the defendant Silverberg, et al was ordered to comply with the mandate therein. Silverberg admitted to Judge Frank S. Meadows, that he cannot produce evidence to support his claim, and cannot offer authority to bring federal court's jurisdiction of his legal fee already determined by federal court to state court. Silverberg et al is a corporation, acted as attorney Pro Se making all pleading moot. Silverberg, et al has failed to make a Prima Facie case. State court lack jurisdiction to adjudi-

cate issues already settle by federal court that entered its judgment for the parties, with prejudice, barring relitigation.

CONCLUSION

THE PETITION FOR A WRIT OF CERTIORARI SHOULD BE GRANTED

November 5, 1986

Respectfully submitted
By the petitioner

Henry Malachowski Pro Se

Henry Malachowski
as Pro Se

28 Wright Street
Keene, New Hampshire
03431
(603) 352-5822

A P P E N D I X

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HENRY MALACHOWSKI, Plaintiff — CIVIL NO. B82-545

v.

SILVERBERG, MARVIN & SWAIM, P.C. & JAMES A. RANDEL, ESQ., ET AL — Oct 20, 1982

MOTION TO DISMISS

The undersigned defendants hereby move, pursuant to Rules.....

MALACHOWSKI V SILVERBERG, ET AL, CIVIL No. B-82-545 11/24/82

Subject to prior and de novo review by the trial judge on a timely objection, cf. 28 U.S.C § 636(b), Rule D. Conn. Rules for U. S. Magistrate (as amended 10/1/81), the defendant state judges' motion to dismiss this purported civil rights action is ruled as follows:

To the extent service or process has not yet been effected, this Court currently lacks personal jurisdiction, but the complaint does not abate pending and prompt

effort to perfect service,. cf Grammenos v Lemos,. 457 F.2d 1067,. 1071 (2nd Cir. 1972). On the merits,. the claims do seem conclusory as alleged, see Ostrer v Aronwald,. 567 F.2d 551,. 553 (2nd Cir. 1977), but some leeway must be initially given this pro se pleading effort, see Haines v Kerner,. 404 U.S. 519, 520-21 (1972), and the matter is perhaps best promptly addressed by summary judgment. cf. Contemporary Mission,. Inc. v. U.S. Postal Service,. 648 F2d 97. 106-7 (2 cir. 1981), particularly to meet concretely plaintiff's assertion in response to claims of absolute immunity from damages,. see Dennis v Sparks,. 449 U. S. 24 (1980), that while his case was still removed state judges did act with that "clear absence of all jurisdiction" which alone deprived them of immunity. Stump v. Sparkman, 435 U.S. 349. 356-7 (1978). As far as equitable relief is con-

cerned, however, the non-interference principles of Younger v. Harris, 401 U. S. 37 (1971), plainly counsel dismissal. The instant motion to dismiss is therefore granted as to equitable relief and denied at this time to damages without prejudice to summary judgment proceedings.

A. H. L.

U. S. MAGISTRATE

Ref. U.S. Court of Appeals
No. 82-6350

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HENRY MALACHOWSKI Plaintiff	:	Civil
VERSUS	:	B-82-
SILVERBERG, MARVIN & SWAIM, P.C. Et Al Defendants	:	545

MOTION FOR ORDER

The plaintiff in the above entitled action respectfully request an Order requiring all named defendants and their attorneys to appear before the court to show why they should not be adjudged guilty of contempt for violations of the provisions of the Federal decree of February 15, 1977 (Exhibit "A", a true copy hereto attached) and why they should not be enjoined from further prosecuting the proceedings in the state court. The PLAINTIFF

1/3/83

Subject to prior review and de novo review by the trial judge on a timely objection, cf, 28 U.S.C. § 636(b),. Rule 2,. D. Conn,

Rules for U.S. Magistrates (as amended 10/1/81, plaintiff's pending request for equitable relief is denied since the non-interference principles of Younger v. Harris, 401 U.S. 37 (1971), plainly so counsel, as already indicated in the previous ruling herein granting the defendant state judges' motion to dismiss, as to equitable relief, on the complaint's face.

A. H. L.
U. S. MAGISTRATE

Ref. U.S. Court of Appeals
No. 83-6106

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HENRY MALACHOWSKI	:	
Plaintiff	:	
V.	:	
	:	
SILVERBERG, MARVIN AND SWAIM, P.C., JAMES A. RANDEL,ESQ., BERKOWITZ AND BALBIRER, P.C. SILVER, GOLUB AND SANDAK, P.C. AND ERNEST F. TEITELL, ESQ.,	:	CIVIL NO. B-82-545
Defendants	:	

MOTION TO DISMISS

SILVERBERG, et al B-82-545 2/14/83

Moving defendants have apparently acted as counsel in bringing suit against plaintiff to collect a vigorously disputed attorney's fee claim, and seek dismissal now of this reactive suit for insufficiency, cf. Rule 12(b)(6), Fed. R. Civ. P. Despite the generosity with which this pro se complaint should be read, see Haines v Kerner, 404 U.S. 519, 520-21 (1972), there seems here only conclusory allegations of "conspiracy" with others, including judges, as far as any purported civil rights liabilty

is conceivably concerned, see, e.g., Ostrer v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977)--compare, e.g., the clearcut, specific charge of judicial bribery involved in Dennis v. Sparks, 449 U.S. 24 (1980)--and as far as possible state law questions are concerned, a purported claim for false or vexatious suit cannot at a minimum be brought before termination of the other proceeding favorable to the present plaintiff, as defendants point out, see, e.g., Vandersluis v. Weil, 176 Conn. 353, 356 (1978), and plaintiff identifies no other recognized claim as against these defendants. Subject to prior and de novo review by the trial judge on timely objection, cf. 28 U.S.C. § 636(b), Rule, D. Conn, Rules for U.S. Magistrates (as amended 10/1/81) the instant motion to dismiss is accordingly granted.

A.H.L.
U.S. MAGISTRATE

Appeal No. 83-6044

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

HENRY MALACHOWSKI Plaintiff	:	
vs.	:	CIVIL NO. B-82-545
SILVERBERG, MARVIN & SWAIM, P.C. ET AL.	:	

MOTION TO DISMISS

Now comes Alan H. Nevas, United States Attorney for the District of Connecticut, by Linda K. Lager, Assistant United States Attorney, on behalf of United States District Judge T. Emmet Clarie, United States District Judge Ellen Bree Burns, and United States Magistrate Thomas P. Smith, and hereby moves, pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6), 8(a) and 8(e) of the Federal Rules of Civil Procedure, that the above-captioned action be dismissed for the following reasons.

2/14/83

As similarly indicated in the prior ruling

herein on the defendant state judges' motion to dismiss,. there is clearly no basis for equitable relief as to the defendant federal judges and magistrate, who here now also moved for dismissal; the latter defendants, moreover, were patently at all times acting within their jurisdiction in the sense affording them absolute immunity from damage claims, see,. e.g. Dennis v. Sparks 449 US 24 (1980), Stump v Sparkman 435 US 349 (1978). The instant motion to dismiss is therefore granted, subject to prior and de novo review by the trial judge on timely objection, cf. 28 USC §636 (b), Rule 2,D. Conn Rules for U.S. Magistrates(as amended 10/1/81).

A H L U.S. Magistrate

FILED
Feb 14 '83
U.S. Dist. Court
New Haven
Conn

Appeal No. 83-6068

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
Dec 15 '82
U.S.D.C.
Bridgeport
CT.

HENRY MALACHOWSKI
Plaintiff

V.

SILVERBERG, MARVIN & SWAIM, P.C., JAMES A. RANDEL, ESQ., BERKOWITZ & BALBIRER, P.C., SILVER, GOLUB & SANDAK, P.C., AND ERNEST F. TIETELL, ESQ.,
Defendants

MOTION TO DISMISS IN BEHALF OF DEFENDANT, JAMES A. RANDEL, ESQ.

The Defendant, James A. Randel, Esq., pursuant to Rules 12(b)(2)(4)(5) of the Federal Rules of Civil Procedure, moves to dismiss the Complaint for the following reasons and in accordance with the attached affidavit of James A. Randel. Filed Feb 14 '83

2/10/83

Subject to prior and de novo review by the trial judge in timely objection, cf. 28 U.S.C. § 636(b), Rule 2, D Conn. Rules for U.S. Magistrates (as amended 10/1/81), this motion to dismiss is denied at this time

since outright dismissal seems in any event generally inappropriate if jurisdiction can be acquired in such relatively early stage of suit by re-service, cf Grammenos v Lemos 457 F2d 1067,1071 (2nd Cir. 1972),. and plaintiff can remove all dispute in the point readily enough now by prompt personal service on this defendant hereafter.

AHL U S Magistrate

FILED
Feb 14 '83
U.S. Dist. Court
New Haven, Conn

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED
Dec 15 '82
U.S.D.C.
Bridgeport
CT.

HENRY MALACHOWSKI
Plaintiff

V.

SILVERBERG, MARVIN & SWAIM, P.C.,JAMES A. RANDEL, ESQ., BERKOWITZ & BALBIRER, P.C., SILVER, GOLUB & SANDAK,P.C., AND ERNEST F. TEITELL, ESQ.,
Defendants

MOTION TO DISMISS IN BEHALF OF DEFENDANT ERNEST F.TEITELL, ESQ.

The defendant, Ernest F. Teitell, Esq., pursuant to Rules 12 (b)(2)(5)(4) and (6) moves to dismiss the Complaint for the following reasons and in accordance with the attached affidavit of Ernest F. Teitell.

2/10/83

FILED
Feb 14 '83

Subject to prior and de novo reciew by the trial judge on timely objection, cf. 28 U.S.C § 636(b), Rule 2, D. Conn. Rules for U.S. Magistrates (as amended 10/1/81), the instant motion to dismiss is granted for the complaint's failure to assert as again-

st defendant Teitell the breach of any recognized legal duty, and any injury to plaintiff caused by said defendant's conduct.

A H L

U S Magistrate

FILED

Feb 14 '
U. S. Dist. Court
New Haven Conn

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT 83-3009

PRO SE
M/29
83-3009

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 31st day of March , one thousand nine hundred and 83.

in re: Henry Malachowski,
Petitioner.

SEAL
FILED
MAR 31 1983

A motion having been made herein by Petitioner pro se for Writ of Mandamus

Upon consideration thereof, it is

Ordered that said motion be and it hereby is DENIED.

Amalya L. Kearse

Lawrence W. Pierce

George C. Platt

Circuit Judges

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the seventeenth day of June, one-thousand nine hundred and eighty-three.

----------X

IN RE: No. 83-3009

HENRY MALACHOWSKI.
Petitioner

SEAL
FILED
JUN 17 1983

----------X

A petition for a rehearing having been filed herein by petitioner, Henry J. Malachowski, pro se.

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

A. Daniel Fusaro, Clerk
by

Francis X. Gindhart,

Chief Deputy Clerk

No. 83-126

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

HENRY MALACHOWSKI

Petitioner,

-against-

SILVERBERG, MARVIN & SWAIM, P.C.
and JAMES A. RANDEL, Esq.
BERKOWITZ & BALBIRER, P.C.
JUDGE ROBERT L. LEVISTER, P.J.
JUDGE T. CLARK HULL
JUDGE HUGH C. CURRAN
JUDGE SIDNEY S. LANDAU
JUDGE NICHOLAS A. CIOFFI
JUDGE MARGARET C. DRISCOLL
JUDGE STANLEY NOVACK
SILVER, GOLUB & SANDAK, P.C.
and ERNEST F. TEITELL, Esq.
U.S. MAGISTRATE THOMAS P. SMITH
U.S. DISTRICT JUDGE ELLEN BREE BURNS
U.S. DISTRICT JUDGE T. EMMET CLARIE

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

HENRY MALACHOWSKI - Pro Se
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 3, 1983

Mr. Henry Malachowski
28 Wright Street
Keene, NH 03431

Re: Henry Malachowski,
v. Silverberg, Marvin & Swaim, P.C.
et al. No. 83-126

Dear Mr. Malachowski:

The Court today entered the following order in the above entitled case:

The petition for a writ of certiorari is denied.

Very truly yours,

Alexander L. Stevas, Clerk

cc: Paul M. Shapiro, Esq.
Andrew B. Bowman, Esq.

- X

NOTE: Respondents'attorney never filed an appearance. or acknowledged petition for MANDAMUS against A. H. LATIMER, US MAGISTRATE and T. F. GILROY DALY, USDJ

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

		82 6350
MALACHOWSKI	:	83-6068
	:	NOTICE OF MOTION
VS.	:	For
	:	Dismissal or for
SILVERBERG, MARVIN & SWAIM, P.C. ET AL.	:	Summary Affirance of Decision Below

Motion By:
Linda Lager, Assist. U.S. Attorn

SEAL
JUN 23
1983

Decision of U.S. Magistrate Arthur H. Latimer, subsequently affirmed by U.S. District Judge T.F. Gilroy Daly

----- ORDER ----

IT IS HEREBY ORDERED that the motion for dismissal of the appeal or summary affirmance is disposed of as follows: The appeal is dismissed for lack of jurisdiction since the appeal was taken prior to the decision of the district judge.

SEAL
FILED
SEP 14
1983

WILFRED FEINBERG, Chief Judge

HENRY J. FRIENDLY

JON O. NEWMAN
Circuit Judges

Sept 14, 1983
Date

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 5th day of January one thousand nine hundred and eighty-four.

- - - - - - - - - - - - - - - - - - - -X

HENRY MALACHOWSKI

Plaintiff-Appellant

v.

SILVERBERG, MARVIN & SWAIM, P.C.; JAMES A. RANDEL; BERKOWITZ & BALBIRER, P.C.; JUDGE ROBERT L. LEVISTER, JUDGE T. CLARK HULL; et al.,

Nos. 82-6350, 83-6016, 83-6044 & 83-6068

SEAL

- - - - - - - - - - - - - - - - - - - -X

FILED
JAN 05 1984

A petition for rehearing having been filed herein by appellant, Henry Malachowski, pro se,

Upon consideration thereof, it is

Ordered that said petition be and it is DENIED.

A. Daniel Fusaro, Clerk

By Francis X. Gindhart,
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Corcuit, held at the United States Courthouse,, in the City of New York, on the 5th day of January one thousand nine hundred and eighty-four.

- - - - - - - - - - - - - - - - - - -X

HENRY MALACHOWSKI,
Plaintiff-Appellant,
v.

Nos. 82-6350, 83-6016,. 83-6044, 83-6068.

SILVERBERG, MARVIN & SWAIM, P.C.; JAMES A. RANDEL; BERKOWITZ & BALBIRER, P.C.; JUDGE ROBERT L. LEVISTER; JUDGE T. CLARK HULL;et,. al.
Defendants-Appellees,

- - - - - - - - - - - - - -X

SEAL
FILED
JAN 05 1984

A petition for rehearing having been filed herein by Appellant, Henry Malachowski, pro se (in 83-6068 only)

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

A. Daniel Fusaro, Clerk

by Victoria c Dalton,
Deputy Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

PRO SE
4/24

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 24th day of April, one thousand and eighty-four.

- - - - - - - - - - - - - - - - - - - -

In Re: Henry Malachowski
Petitioner

SEAL

84-3022

FILED
APR 24
1984

- - - - - - - - - - - - - - - - - -

A motion having been made herein by petitioner pro se for a writ of mandamus.

Upon consideration thereof, it is

Ordered that said motion be and it hereby is DENIED.

Irving R. Kaufman

Thomas J. Meskill

Jon O. Newman
Circuit Judges

Mandamus directed to :
Warren C. Eginton, USDJ who refused to do his duty under the Constitution and laws of the U. S. imposed upon him

UNITED STATES COURT OF APPEALS SEAL

SECOND CIRCUIT FILED APR 30 1984

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 30th day of April, one thousand nine hundred and eighty-four.

----------X U.S. COURT OF APPEALS

Malachowski v Silverberg, Docket Number 82-6350 83-6016

Marvin & Swaim 83-6064

U.S. DISTRICT COURT

----------X and DOCKET NUMBER CT 82-B*545 Daly

A scheduling order in accordance with the Civil Appeals Management Plan of this Court having been entered herein, requiring an index to the record on appeal, a copy of the docket entries certified by the clerk of the district court, the record on appeal, the appellant's brief and joint appendix to be filed on or before the dates stated on the

scheduling order,. and also providing that in the event of default by the appellant the appeal shall be dismissed forthwith, and it appearing that the appellant has so defaulted,

Upon consideration of the appeal herein, it is

ORDERED that the appeal be, and it hereby is, dismissed.

ELAINE B. GOLDSMITH,
Clerk

By

Gayle M. McDowell
Deputy Clerk

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of May one thousand nine hundred and eighty-four.

MALACHOWSKI V SILVERBERG, MARVIN & SWAIM

SEAL

FILED

MAY 23 1984

82-6350, 83-6016, 83-6044

An order dismissing the appeal for failure to file the brief and appendix having been entered in error on April 30, 1984,

ORDERED that the said order be and it hereby is vacated; and it further

ORDERED the* the appeal be and it hereby is reinstated:

ELAINE B. GOLDSMITH
Clerk

By:

Gayle McDowell
Deputy Clerk

* Should be (that)

NOTE:
Appeals Court lost Appellant's briefs.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

SEAL
May 30 '84
U.S. Dist.
Court

HENRY MALACHOWSKI	:	
-vs-	:	
SILVERBERG. MARVIN & SWAIM, et al	:	Civl No. B-82-545(PCD)

RULINGS ON PENDING MOTIONS

This action named as defendants certain law firms and their employees, a group of judges of the Connecticut superior court, and two judges and a magistrate of this court. The claims against the federal judicial defendants and certain of the law firms and attorneys have previously been dismissed. For reasons set forth below, the motion of the state court judges for summary judgment is granted, and all other pending motions are denied.

Facts

Plaintiff seems to seek relief for breach of contract and violation of his civil rights, steming from his efforts by

judicial means to revoke a licensing agreement and subsequent fee dispute with counsel.

This matter traces its roots to Malachowski v.Robert Daniels & Co., Civil No. B-76-222 (D.Conn.), an action brought by plaintiff in state court, later removed to this court, seeking to revoke a license and related agreements and rights involving "Neo-Arth," an arthritis relief product of plaintiff's invention. On February 15, 1977, the court, Zampano, J., approved a stipulation and order and incorporated settlement agreement, signed by both plaintiff's counsel, James A. Randel, of Silverberg, Marvin & Swaim, and defense counsel, and calling for the return of all rights and documents to plaintiff, thus terminating the action. Thereafter, a dispute as to counsel fee gave rise to the bringing of the action Silverberg, Marvin

& Swaim v. Malachowski, No. CV-77-0031-793S, in Superior Court for the Judicial District of Stamford/Norwalk in which plaintiff's prior counsel sought to recover a claimed fee of some $30,000. The law firm apparently was represented successively or jointly by Berkowitz & Balbirer, and Silver, Golub & Sandak, of whom Ernest P. Teitell was an employee.

It appears that the law firm secured the attachment, by way of prejudgment remedy, of Malachowski's Wilton home. Subsequently, he was permitted to remove the action to federal court, where it was assigned Civil No. B-80-17.[1]

---

[1] Plaintiff's apparent and quite mistaken conception that the state courts are without jurisdiction to hear a dispute concerning fee arrangements for representation in a matter the settlement of which was ultimately approved by a federal judge seems to underlie his reistance to the prosecution of the state action and his filing of the instant case. He further appears to view the question of counsel fees as having been incorporated in the settlement

agreement. This position is bereft of support from the settlement agreement itself, paragraph 13(F) of which involves only the set-off of plaintiff's costs from any royalties to be paid by plaintiff to a subsidiary of Robert Daniels & Co, upon plaintiff's successful marketing of the product.

Thereafter, on February 25, 1981, Magistrate Smith recommended a remand of the matter back to state court on grounds that removal had been improvident as untimely under 28 U.S.C § 1446(b). This recommendation was approved on March 19, 1981, by Judge Burns. Malachowski complained of these actions, to no avail, to then Chief Judge Clarie. At the state court level, prior to the removal, subsequent to the remand, and to a limited extent during the interim period, one or more of state superior court judges Hull, Curran, Landau, Cioffi, Driscoll, and Novack may have dealt with aspects of the state court action.

On September 16, 1982, after an identi-

cal action was dismissed for lack of personal jurisdiction by the federal district court for the District of New Hampshire,. in which state plaintiff now resides, he brought the instant action pro se. His thirty page complaint names each and every law firm, lawyer,. and judicial officer noted above as co-conspirators in an endeavor to violate his civil, property and contract rights. He seeks various forms of injunctive and legal relief. Jurisdiction is claimed on diversity and federal question grounds..

On November 24,. 1982,. Magistrate Latimer dismissed on immunity and non-interference grounds all claims for injunctive relief against the Connecticut judicial defendants, but in view of the possible allegation that state court judges acted with regard to the action during the period of time it was before the federal court, and

in excess of caution, denied the motion to dismiss without prejudice as to the claims for money damages. Judge Daly approved this ruling on December 15, 1982. All claims against federal judicial officers Smith, Burns and Clarie were dismissed, principally on grounds of judicial immunity and non-interference with state court proceedings by Magistrate Latimer on February 14, 1983, approved by Judge Daly on May 6, 1983. On the same dates, all claims against Silver, Golub & Sandak, Berkowitz & Balbirer, and Ernest Teitell were dismissed, principally on grounds of failure to describe adequately the conspiracy alleged and assert the favorable termination of the claimed vexatious state suit. None of these rulings has been disturbed on appeal. This matter appears to remain vital only against defendants Silverberg, Marvin & Swaim, and James A. Randel, and, as to

the claims for money damages, against the state judicial defendants. Presently pending are:

(1) The state judicial defendants' motion for summary judgment.

(2) Plaintiff's motion to add as defendants; state judges Lewis and Ford; Chief U.S. District Court Judge Daly, U.S.District Judge Eginton, Magistrate Latimer, and attorneys Lager, Shapiro and Bowman.

(3) Plaintiff's motions for relief from already decided matters, i.e. to strike and for relief from judgment[2/]

2/ As noted in the text below, plaintiff appears to view certain other, long-since decided, matters as pending. The court does not share this view, nor the conception of litigation it and plaintiff's handling of this matter relects.

(4) Plaintiff's motion for injunctive relief.

The motions will be treated seriatim.

Discussion

1. The state judicial defendants' motion for summary judgment must be granted. Any doubts properly held by Magistrate Latimer

as to the nature of any state judicial action taken during the interim period between the removal of the state case to federal court and its subsequent remand to state court are convincingly and wholly dispelled on this motion. By affidavit and submission of the transcript of the state court hearing in question, the state judicial defendants have made abundantly clear that no action violative of plaintiff's rights was taken by any state judge or judges, at the hearing on March 16, 1981, or otherwise, in the absence of state court jurisdiction so as to be stripped of the protection of judicial immunity. Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). On the contrary, upon learning of the removal, the hearing judge promptly stayed the pending motion and only after the case had been remanded did he act, ruling in fact on April 20, 1981, in plaintiff's

favor. Plaintiff's jurisdictional contentions, as noted in footnote 1 above, on the contrary, seem to assert that any state court involvement in any aspect of his dispute with counsel is, ab initio, invalid. Such a posture is without merit in any event and is more properly raised initially in state court. Accordingly, as to the remaining claims for money damages, summary judgment shall enter on behalf of the state judicial defendants Hull, Curran, Landau, Driscoll, Cioffi, and Novack, on grounds of judicial immunity. Pierson v. Ray, 386 U.S. 547 (1967).

2. Plaintiff's motions to add U.S. Judges Eginton and Daly - to whom this matter was previously assigned - U.S. Magistrate Latimer, the Assistant Attorney and State's Attorney defending this case, counsel for the private defendants, and Superior Court Judges Ford and Lewis, as

defendants in this action are controlled by the instant and earlier ruling of this court dismissing claims against various classes of defendants. To the extent they are not so controlled, they are now denied. Where, depite giving initial leeway in the reading of the pro se complaint, see Haines v. Kerner, 404 U.S. 519, 520-21 (1972), its conclusory allegations of conspiracy have been dismissed as insufficient for pleading purposes as to one defendant class after another, see Rule 8(a)(2), Fed. R. Civ. P.; Oster v. Aronwald, 567 F.2d 551, 553 (2d Cir. 1977), to add defendants against whom the claims could no more withstand a motion to dismiss than could the claims previously held insufficient would be to engage in an exercise in futility. All plaintiff's motions to add defendants are accordingly denied.

3. Plaintiff's motion for relief from

judgment or order dated October 11, 1982" and "motion for relief from judgment or order" filed May 31,, 1983,. are both denied. Viewed as motion for reconsideration of prior rulings,. reconsideration is granted, notwithstanding the requirment of Rule 9 (e)(1),. Local Rules of Court for the District of Connecticut, that such motions be filed and served within fifteen days of the filing of the decision or order in question. After review,. the rulings are sustained and plaintiff's motions are thus denied.

4. Finally, plaintiff's motion for injunctive relief, apparently in the form of an order restraining the prosecution of the state action, is denied. Plaintiff has wholly failed to establish any authority for such extraordinary relief or to create a record warranting the exercise of such authority here.

The other motions stated by plaintiff in his April 7, 1984, and May 4, 1984, letters to the court to be pending appear to have been fully ruled on and thus merit no further attention by the court.

Plaintiff shall be entitled until June 11, 1984, to seek leave of court to file an amended complaint, to assert his remaining claims only against defendants Silverberg, Marvin & Swaim and Ernest A. Randel, in conformity with requirements of Rule 8(a)(2), Fed.R.Civ.P., and the rulings of the court.

All discovery shall be completed on or before July 6, 1984. No further motions shall be filed, except on or before July 6, 1984. In the event the parties agree that a pretrial/settlement conference is desirable, such will be scheduled on request to the clerk of the court. The case shall be deemed ready for trial on July 9,

1984, and shall be subject to assignement for trial at any time after that date.

Plaintiff shall review with care the provisions of Rule 11, Fed.R.Civ.P., including the provisions for sanctions to check abuses in relation to pleading. The amended rule is noted to apply to anyone who signed a pleading, motion or other paper filed in the court. 1983 Advisory Committee Note, Rule 11, Fed.R.Civ.P. The parties shall adhere strictly to and use the federal and local rules to facilitate a prompt and efficient resolution of this case.

SO ORDERED.

Dated at Hartford, Connecticut, this 29th day of May, 1984.

Peter C. Dorsey
United States District Judge

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

AT A stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New New York, on the 16th day of August, One Thousand Nine Hundred and Eighty-four.

PRESENT:

HON. ELLSWORTH A. VAN GRAAFEILAND, Circuit Judge
HON. RALPH K. WINTER, Circuit Judge
HON. ALBERT W. COFFRIN, Chief District Judge*

- - - - - - - - - - - - - - - -X

HENRY MALACHOWSKI
Plaintiff-Appellant

v.

SILVERBERG, MARVIN & SWAIM,P.C.; JAMES A.RANDEL; BERKOWITZ & BALBIRER,P.C.; JUDGE ROBERT L. LEVISTER; JUDGE T. CLARK HULL; JUDGE HUGH C. CURRAN; JUDGE SIDNEY S. LANDAU; JUDGE NICHOLAS A. CIOFFI; JUDGE MARGARET C. DRISCOLL; JUDGE STANLEY NOVACK; SILVER, GOLUB & SANDAK,P.C.; ERNEST F. TEITELL; U.S. Magistrate THOMAS P. SMITH; U.S. District Judge ELLEN BREE BURNS and U.S. District Judge T. EMMET CLARIE.
Defendants-Appellees.

ORDER
82-6350
83-6016
83-6044

SEAL
FILED
AUG 16
1984

- - - - - - - - - - - - - - - -X

* Of the United States District Court for the District of Vermont, sitting by designation.

Three appeals have been filed with this Court in the above action. Appeals number 83-6016 and 83-6044 have been taken from orders of a magistrate that had not yet been considered or adopted by the district court when the notices of appeal were filed and were not final appealable orders. They are dismissed for lack of jurisdiction.

Assuming that an appeal from the order dismissing that portion of plaintiff's claim seeking equitable relief, appeal number 82-6350, may be taken pursuant to 28 U.S.C. § 1292, the order is affirmed for the reasons stated in the magistrate's decision and order of November 24, 1982.

The motion for recusal of Judges is denied.

Hon. Ellsworth A. Van Graafeiland

Hon. Ralph K. Winter

Hon. Albert W. Coffrin

N. B. Since this statement does not constitute a formal opinion of this Court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

UNITED STATES COURT OF APPEALS 84-6192
SECOND CIRCUIT

NOTICE OF MOTION

MALACHOWSKI : for Appeal-Reversal of
VS. : Court's Ruling
:
SILVERBERG, MARVIN : SEAL
& SWAIM, P.C. ET AL : FILED
- - - - - - - - - - - SEP 10 1984

Judge or agency whose order is being appealed:

Rulings of U.S. District Judge Peter C. Dorsey

Brief statement of the relief requested:

Injunctive Relief of state court proceedings impairing and relitigating appellant's final federal judgment by appellant's attorneys who unlawfully intervened in privity to the same matters, already settled by federal court. Reversal of Court's Rulings for lack of jurisdiction and misrepresentation of issues of facts.

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied

SEAL
FILED
FEB 07 1985

J. Edward Lumbard

Walter R. Mansfield

Lawrence W. Pierce
Circuit Judge

February 7, 1985
Date

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 19th day of October, one thousand nine hundred and eighty-four.

HENRY MALACHOWSKI
Plaintiff-Appellant,
v.

SILVERBERG, MARVIN & SWAIM, P.C. et al.,
Defendants-Appellees.

SEAL
FILED
OCT 19
1984

Nos. 82-6350
83-6016
83-6044

A petition for a rehearing having been filed herein by Henry Malachowski, Appellant pro-se,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

Elaine B. Goldsmith,
Clerk

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the 7th day of February, one thousand nine hundred and 85.

- - - - - - - - - - - - - - -

Henry Malachowski
Appellant,

v.

Silverberg, Marvin & Swaim,
Appellees.

SEAL
Filed
FEB 07 1985

84-6192

- - - - - - - - - - - - - - -

A motion having been made herein by appellant pro se for leave to add defendants; to dismiss (strike brief),

Upon consideration thereof, it is Ordered that said motion be and it hereby is denied.

J. Edaward Lumbard

Walter R. Mansfield

Lawrence W. Pierce
Circuit Judges

UNITED STATES COURT of APPEALS

FOR THE SECOND CIRCUIT

B82-545 PCD 86-7310

HENRY MALACHOWSKI
VS
SILVERBERG, MARVIN & SWAIM, et al

NOTICE OF MOTION

for Appeal-Vacate Order of Dismissal

3/13/86 - Judgment 4/24/86

Judge or agency whose order is being appealed: Peter C Dorsey,. U.S.D.J.

Brief statement of the relief requested:

Vacate unconstitutional order as being violative of due process of the law,. remand for evidentiary hearings affording appellant the right to have federal court make decisions upon his constitutional claims & rights secured by his final federal judgment,. enjoin state court proceedings relitigating issues settled by federal court & afford hearings upon reversible

errors depriving appellant rights secured by Federal Constitution,. & grant appellant the right to an impartial judge to hear his constitutional claims.

ORDER

IT IS HEREBY ORDERED that the motion be and it hereby is denied and the appeal is dismissed.

SEAL

JUL 08 1986

IRVING R. KAUFMAN

JLO/ per IRK

7/7/81

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

HENRY MALACHOWSKI Petitioner-Plaintiff	)	Civil No. B82-545(PCD)
VS	)	Appeal No. 86-7310
SILVERBERG, MARVIN & SWAIM, P.C., et al Respondents	)	July 18,1986

PETITION TO REHEAR COURT'S DISMISSAL OF PETITIONER'S APPEAL IN KNOWING VIOLATION OF DUE PROCESS OF THE LAW WHERE THIS APPEALS COURT ABDICATED ITS JURISDICTION AND ITS DUTY TO PROTECT AND EFFECTUATE PETITIONER'S FINAL FEDERAL JUDGMENT FROM BEING RELITIGATED IN STATE COURT PROCEEDINGS AND PERMITTED THE DEFENDANTS TO STEAL PETITIONER'S PROPERTY DECREED TO PETITIONER BY FEDERAL COURT.

NOW COMES Henry Malachowski, petitioner and plaintiff above named, pursuant to 28 USCS 2283; 28 USCS 2284; 28 USCS 1331; 42 USCS 1983; 28 USCS 1343(3); the Constitution of the United States, 5th, 6th, 7th

and 14th Amendments; Due Process and Equal Protection of the laws; decisions entered by the U.S. Supreme Court and other appeals courts and by this Court of Appeals for the Second Circuit of the same essential matters; herein petitions this Court of Appeals for the Second Circuit to reconsider its order of dismissal dated July 8, 1986 as being repugnant to the Constitution and laws of the United States and in conflict with laws enacted by Congress; and hereby moves that this Court of Appeals vacate its order of dismissal and says:

1. That this Court of Appeals has ignored its duty to "protect and effectuate" petitioner's final federal judgment plenary as mandated by the Constitution and the U.S. Supreme Court from being relitigated and impaired in state court proceedings.

2. That this Court of Appeals has aided

and abetted in fraud, in the theft of petitioner's property stolen by Silverberg, et al, of which federal court decreed to the petitioner under a final federal judgment.

3. This Court of Appeals has precluded petitioner his due process right to prosecute his constitutional claims against the defendants who deprived petitioner of property rights and money without due process of the law.

WHEREFORE:

Petitioner moves this Court of Appeals to vacate its order of dismissal which is clearly repugnant to the Constitution and laws of the United States and forthwith remand the action to federal court for further proceedings in compliance with due process of the law and petitioner's rights secured to him by the Constitution of the United States.

Respectfully submitted,
Petitioner-Plaintiff,

HENRY MALACHOWSKI-PRO SE
28 Wright Street
Keene, New Hampshire 03431
(603) 352-5822

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Petition to Rehear was mailed this 18th day of July, 1986 to Linda Lager, Assist. U.S. Atty., P.O. Box 1824, New Haven, CT 06508; Paul M. Shapiro, Assist. Atty. General, University of Connecticut, Gulley Hall U-177, Storrs, CT 06268; Andrew B. Bowman, Esq., 1804 Post Road East, Westport, Ct 06880

Henry Malachowski - Pro Se

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit,. held at the United States Court House,. in the City of New York, on the 12th day of August , one thousand nine hundred and eighty-six.

- -X

Henry Malachowski,

Appellant-Petitioner

v. 86-7310

Silverberg, Marvin & Swaim, P.C.,et al.,

Appellees-Respondents

- -X

A motion having been made herein by appellant pro se for reconsideration

SEAL
Aug 12, 1986

Upon consideration thereof, it is Ordered that said motion be and it hereby is denied

Irving R. Kaufman

James L. Oates

Circuit Judges

EXHIBITS

E X H I B I T S

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT	)	FILED STAMPED Feb 15 '77 U.S. Dist. Court- New Haven,Conn
HENRY MALACHOWSKI	)	
VS.	)	
ROBERT DANIELS & COMPANY,INC. GENERICS CORPORATION OF AMERICA	)	CIVIL NO. B-76-222

STIPULATION AND ORDER

WHEREAS Henry J. Malachowski, by his Attorney,. James A. Randel,. Esq.,and Robert Daniels & Company, Inc. and Generics Corporation of America, by their attorney, Stephen G. Friedler, Esq. are desirous of terminating the above lawsuit.

IT IS HEREBY STIPULATED AND AGREED:

1. All rights, title,. interest, marketing rights,. manufacturing rights,. licensing rights,. trademarks and trademark rights,. patents,. patent applications, including all rights, title, and interest in and to U.S. Patent 3, 955,030 and any patent, divisional, continuation, continuation-in-

part applications, and any foreign conterpart patents and patent applications, and any extensions or reissues thereof, and all other incidents of ownership in and to the drug, Neo-Arth® (also called Code-3), and any analog, derivative, or equivalent thereof, in part or in toto, are irrevocably now and forevermore exclusively vested in Henry J. Malachowski of 35 Orchard Drive, Wilton, Connecticut.

2. A "Settlement Agreement" dated February 15, 1977 has been signed by the parties hereto and said "Settlement Agreement" is incorporated herein in its entirety.

3. Each party hereby releases the other from any and all liability or set-off as to the above lawsuit or, any counterclaim or set-off thereunder.

DATED: FEBRUARY 15, 1977

HENRY J. MALACHOWSKI

BY: _____
JAMES A. RANDEL
Silverberg, Marvin & Swaim
P.O. Box 1026
140 Elm Street
New Canaan, CT 06840

ROBERT DANIELS & COMPANY, INC.;
GENERICS CORPORATION OF AMERICA

BY: _____
STEPHEN G. FRIEDLER
Hilcoff, Kaplan & Friedler
270 Orange Street
New Haven, CT

Approved and

SO ORDERED. The case is dismissed, with prejudice, and without cost to either party.

FEBRUARY 15, 1977

_____
ROBERT C. ZAMPANO
UNITED STATES DISTRICT JUDGE

SEAL
I hereby certify that the foregoing is a true copy of the original document on file. Date 12/12/83

SYLVESTER A. MARKOWSKI
Clerk

By: Lourdes Rivera
Deputy Clerk

Microfilm
Feb 16, 1977
Bridgeport

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED STAMPED Feb 15 '77 U.S. Dist. Court-New Haven, Conn

HENRY MALACHOWSKI)
)
VS.)
)
ROBERT DANIELS & COMPANY, INC.) CIVIL NO.
GENERICS CORPORATION OF) B-76-222
AMERICA)

SETTLEMENT AGREEMENT

WHEREAS the parties to the above lawsuit are desirous of terminating said lawsuit and entering a settlement between themselves,

IT IS HEREBY SETTLED AND AGREED THAT:

1. All rights; title; interest; marketing rights; manufacturing rights; licensing rights; trademarks and trademark rights; patent/patent applications, and interest in and to U.S. Patent 3,995,030, and any parent, divisional, continuation, continuation-in-part applications, and any extensions or reissues thereof (hereafter "patent rights"); in and to the drug, Neo-

Arth® (also called Code-3), and any analog, derivative or equivalent thereof (hereafter "the drug") are now and forevermore irrevocanly and exclusively vested in Henry J. Malachowski of 35 Orchard Drive, Wilton, Connecticut, (hereafter "Malachowski").

2. Robert Daniels & Company, Inc., Generics Corporation of America, and their affiliates and subsidiaries (hereafter "Generics") agree to issue any statement, execute any document and fully cooperate with Malachowski in order to effect the conveyance and legal recordation of the aforesaid rights to Malachowski.

3. Generics agree to notify its patent attorneys, Fidelman, Wolfe & Waldron of 2120 L Street, Washington, D.C. that the owner of all patent rights, here and abroad, now and forevermore, to the drug is Malachowski and to instruct said attorneys

to represent Malachowski in preserving, securing and protecting patent rights here and abroad. Generics agrees to promptly instruct, in writing, said law firm to provide Malachowski with all information and legal work relevant to the drug. Generics agrees to pay all obligations resulting from saidwork performed and disbursements made as of the effective date of this agreement.

4. Generics agrees to promptly provide Malachowski with all information and documentation relevant to examination of the drug by the U.S. Food and Drug Administration (including all its various agencies), the English Ministry of Health,. and similar agencies of other countries (hereafter "Government Agencies").. Generics agrees to promptly contact, in writing, all Government Agencies to inform them that all rights to the drug are now and forevermore

irrevocably and exclusively owned by Malachowski and that complete copies of their files should be made and provided to Malachowski, at Generics' expense, Generics hereby conveys and transfers to Malachowski all Government Agency licenses and applications possessed by it, including but not limited to, VIND's, IND's, NADA's and Clinical Trial Certificates, and agrees to promptly notify the Government Agencies, in writing, of such conveyance and transfer.

5. Generics agrees to turn over to Malachowski all raw material, which it possesses, in any state of fabrication, used in producing the drug. Generics agrees to turn over to Malachowski all of the drug, which it possesses, in any form. As to any of said raw material and drug not presently at Generics' home office in Melville, Long Island, Generics will deliver

same to Malachowski at his home in Wilton, Connecticut within sixty (60) days of the execution of this agreement. Said deliveries shall be/at Generics expense. Generics agrees to promptly notify /in writing all individual, universities, testing facilities, etc, which possess the raw material used to prepare the drug, or the drug itself, to deliver same to Malachowski,, at Generics' expense, at his home in Wilton, Connecticut within sixty (60) days of the execution of this agreement.

6. Generics agrees to promptly provide Malachowski with all information and documentation, including but not limited to reports, studies, correspondence, and tests,, relevant to the drug. Malachowski shall be provided complete copies of every report, study and analysis ever undertaken, relevant to the drug, whether completed or not, at Generics' expense. All said copies

not presently at Generics' home office in Melville,. Long Island will be delivered to Malachowski at his home in Wilton, Connecticut within sixty (60) days of the execution of this agreement, at Generics expense. Generics agrees to promptly notify /in writing, all individuals, universities, testing facilities,. etc, which had any contact with the drug to fully cooperate with Malachowski and to deliver to Malachowski all documentation of studies, tests and analysis done, relevant to the drug, at his home in Wilton, Connecticut, within sixty (60) days of the execution of this agreement, at Generics expense.

7. Generics hereby agrees to promptly supply Malachowski with complete written,. diagrammatic & oral information regarding the know-how of encapsulation, bagging,. and pouching of the drug sufficient to Malachowski to perform said operations.

Said know-how includes, but is not limited to the materials used in encapsulation; the method of encapsulation; the storage of the pills, boluses, capsules, bags, or pouches after encapsulation; and all other information relevant to the preparation of the drug in a marketable form.

8. Generics agrees to inform Malachowski in writing of existing contracts it has with third parties relevant to the production, encapsulation and testing of the drug. Generics agrees (upon instruction from Malachowski) to promptly notify said parties in writing that Malachowski is now the owner of all rights to the drug and that all said contracts will have to be renegotiated with Malachowski. However, in the event Malachowski notifies Generics that he desires the assignment of any contract, Generics will execute the documentation, assigning same to Malachowski.

9. Generics agrees, on behalf of itself and all present and future affiliates, subidiaries, directors, officers, and employees to maintain complete and total secrecy of any confidential matter relevant to the drug including but not limited to the formula, the ingredients, the manner of production, customer lists, the raw material sources, all know-how including know-how regarding encapsulation and licenses, all unpublished patent matters, and all confidential matters relevant to the drug. Generics agrees to promptly notify in writing all past and present affiliates, subsidiaries, directors, officers, employees, and all individual,. universities, testing facilities, etc, now or ever having worked with the grug that information relevant to the drug may not be disclosed without the prior written consent of Malachowski. Generics agrees to indemnify Malachowski for

any damages he suffers due to an unwarranted disclosure or use of the drug by any of its present or future affiliates, subsidiaries, directors, officers or employees or, any individual or entity which derived information or access to the drug from or through Generics. Generics agrees to do all other things requested by Malachowski to insure the secrecy of the drug and, Malachowski's exclusive use and possession thereof.

10. Generics agrees that by this agreement, the "Exclusive License Agreement" executed July 23, 1970 between Robert Daniels & Co., Inc. and Malachowski (Exhibit " A" hereto), the "Assignment" executed July 23, 1970 between Robert Daniels & Company, Inc. and Malachowski (Exhibit "B" hereto), and the "Supplemental Agreement" executed April, 1971 between Robert Daniels & Company, Inc. and Malachowski (Ex-

hibit "C" hereto) are now and forevermore recinded and of no further legal significance. Generics acknowledges that all rights under these documents are now voided and Malachowski is the sole and exclusive owner of all rights in and to the drug, including but not limited to rights to licensing, marketing, manufacturing, trademarks, patent rights, and all other incidents of ownership.

11. Generics hereby agrees to execute any additional documents requested by Malachowski to convey ownership or any rights incident to ownership to Malachowski immediately upon request. Generics agrees to cooperate with Malachowski as to anything requested so to establish his exclusive ownership of the drug, including all rights incident thereto, immediately upon request.

12. Generics agrees that all trademarks

and trademark rights now attached to the name Neo-Arth® are hereby irrevocably conveyed to the exclusive possession of Malachowski. In the event Malachowski decides to market the drug under a different name, Generics agrees to cooperate in effecting, securing and preserving trademarks and trademark rights therefor.

13. In consideration of Generics' obligations hereunder and conditioned upon full performance thereof, Malachowski agrees to pay Generics as follows:

(A) From the date the drug is first marketed in any form, and for whatever purpose, here or abroad, and for five years thereafter, Malachowski will pay Generics (at the end of the year) three percent (3%) of the royalties which he receives from the entity marketing the drug. Therefore, if Malachowski receives One Thousand Dollars ($1,000.00) annual royalties from

the entity marketing the drug, Malachowski will pay Generics Thirty Dollars ($30.00), subject, however, to Paragragh (D).

(B) In the sixth and seventh year following the date the drug is first marketed, Malachowski will pay Generics (at the end of the year) two percent (2%) of the royalties which he receives from the entity marketing the drug. Thereafter, Generics shall have no right to any payments from Malachowski unless Paragragh (C) takes effect.

(C) In addition, in the event that and after Malachowski has received Five Hundred Thousand Dollars ($500,000.00) in royalties from the entity marketing the drug, Malachowski will thereafter pay Generics thirty percent (30%) of the royalties which he receives from the entity marketing the drug until such time as Malachowski has paid Generics an aggregate sum of

One Million Dollars ($1,000,000.00).Thereafter, Generics shall have no right to any payments from Malachowski unless Paragragh (A) or (B) hereunder are still applicable. This paragragh shall not be subject to the time limit of Paragraghs (A) or (B).

(D) In the event Malachowski's adjusted gross income for tax purposes may not be reduced to account for the annual payments due Generics, Malachowski shall pay Generics the aforesaid percentage of the royalties he receives--after taxes.

(E) As used herein, "royalties" means the percentage of sales Malachowski receives from the entity marketing the drug and does not mean advance payments, option payments, consulting payments, salaries, or fringe benefits so long as such payment is not intended as a circumvention of Generics' claim to the aforesaid percentage of royalties paid to Malachowski.

(F) Generics agrees that any money due it under the preceding paragraghs shall be reduced by Malachowski's costs of effectuat- this settlement agreement and, expenditures incurrred prior to the first marketing of the drug. However,. the said reduction in the amount due Generics shall not exceed Twenty-Five Thousand Dollars ($25,000.00).

(G) In the event Malachowski, himself, markets the drug, Generics will be entitled to the aforesaid percentages of an imputed royalty to Malachowski.

14. Generics agrees that it will have absolutely no dealing or communication with the entity which markets the drug.

15. However the drug is ultimately marketed or owned, Generics will have no ownership rights, voting rights, decisionmaking rights, or any other form of control or interest in and to the drug. All decisions regarding the drug are solely those

of Malachowski. Malachowski has no obligations to ever market the drug (other than the exercise of reasonable efforts) and in the event the drug is not marketed, Generics has absolutely no right or entitlement to any form of income.

16. All monies which Generics shall be entitled to hereunder shall be solely derived from royalties which Malachowski receives with regard to an anti-arthritic or anti-inflammatory use of the drug and in the event any other use is developed for the drug, Generics shall not be entitled to any percentage of Malachowski's royalties which are allocable to said other use.

17. Any and all disputes hereunder shall be settled by arbitration in the State of Connecticut pursuant to the rules of the American Arbitration Association.

18. In the event of any court proceedings arising out of this agreement, both

parties consent to the State of Connecticut as the forum for said court proceedings. In addition, both parties consent to application of the laws of Connecticut as to any court proceedings.

19. There have been no representations, warranties, or statements other than as provided herein and this agreement embodies the entire understanding between the parties.

20. Malachowski gives Generics the right to inspect his books and records under reasonable times and conditions but in no event more than once in each calendar year and after notice to him, provided that the drug has been first marketed.

21. Malachowski's agreement to pay Generics as provided for in Paragragh 13 above, shall be binding on his personal heirs, successors, assignees, tranferees, or representatives.

22. Wherever Generics is required to give written notice, as provided above, a copy thereof will be mailed to Malachowski.

23. Generics, its affiliates, subsidiaries, and its individual directors, officers and employees hereby warrants to Mal-Malachowski that it/they have not, prior to this time, sold, transferred, licensed or in any way conveyed/or encumbered the drug, or rights thereto, to any other party.

24. In all other ways not previously mentioned, without limiting its obligations above, Generics agrees to cooperate with Malachowski in obtaining and employing the drug, and all incident rights, for his sole and exclusive use and possession.

25. Malachowski hereby releases Generics from any and all liability under the above lawsuit.

DATED: FEBRUARY 15, 1977

HENRY J. MALACHOWSKI

BY:_____
James A. Randel
Silverberg, Marvin & Swaim, P.C.
P.O. Box 1026
New Canaan, CT 06840

ROBERT DANIELS & COMPANY, INC.;
GENERICS CORPORATION OF AMERICA

BY:_____
Stephen G. Friedler
Hilcoff, Kaplan & Friedler
270 Orange Street
New Haven, CT

SEAL
I hereby certify that the foregoing
is a true copy of the original
document on file, Date 12/12/83

SYLVESTER A. MARKOWSKI
Clerk
Lourdes Rivera
By:_____
Deputy Clerk